

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NICOSHALMAR SPANN,

Plaintiff,

v.

COX COMMUNICATIONS,

Defendant.

Case No. 2:23-cv-00093-GMN-EJY

ORDER

Pending before the Court is Plaintiff's Request for a Short Extension of Time and Request for Leave to Re-Serve Proposed Amended Complaint. ECF No. 22. On the same date Plaintiff filed a Response to the Court's Order to Show Cause. ECF No. 23. Plaintiff shows good cause why this case should not be dismissed for lack of service. Further, Plaintiff explains that he has now familiarized himself with Federal Rule of Civil Procedure 4 regarding service of process.

Federal Rule of Civil Procedure 4(m) provides two avenues for relief. "The first is mandatory: the district court must extend time for service upon a showing of good cause. The second is discretionary: if good cause is not established, the district court may extend time for service upon a showing of excusable neglect." *Crowley v. Bannister*, 734 F.3d 967, 976 (9th Cir. 2013) (citing *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)). Here, Plaintiff, who is pro se, admits he did not understand the rules pertaining to service because of his lack of legal knowledge and inadvertence. ECF No. 22 at 1. Even if this is not sufficient for good cause, the Court exercises its discretion and grants Plaintiff's short extension request.

However, Plaintiff's First Amended Complaint was not filed in accordance with the Federal Rules of Civil Procedure. Plaintiff's First Amended Complaint was filed on October 30, 2023, which is far more than twenty one days after Plaintiff filed his initial Complaint on January 18, 2023. Compare ECF Nos. 1 and 21. Leave of Court was not sought or granted as is required. Fed. R. Civ. P. 15(a)(1)(A) ("A party may amend its pleading once as a matter of course within ... 21 days after serving it"); 15(a)(2) ("In all other cases, a party may amend its pleading only with the opposing

1 party's written consent or the court's leave."'). Proper service of the amended complaint is likely to
2 yield a motion to dismiss in response.

3 Accordingly, IT IS HEREBY ORDERED that Plaintiff has satisfied his obligation to show
4 cause why this matter should not be dismissed for lack of timely service.

5 IT IS FURTHER ORDERED that Plaintiff's Request for a Short Extension of Time (ECF
6 No. 22) is GRANTED in part and DENIED in part.

7 IT IS FURTHER ORDERED that Plaintiff is given through and including **December 4, 2023**
8 to serve Defendant.

9 IT IS FURTHER ORDERED that Plaintiff's Request for Leave to Re-Serve Proposed
10 Amended Complaint is DENIED. Plaintiff must serve his Original Complaint (ECF No. 1) after
11 which he may, if he so chooses, seek leave to file an amended complaint.

12 Dated this 1st of November, 2023.

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15 ELAYNA J. YOUCHAK
16 UNITED STATES MAGISTRATE JUDGE
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